

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

SANDRA E. FLUCK, an individual,)	
)	C.A. No. 06-188
Plaintiff,)	
v.)	
)	
)	
HOENEN & MITCHELL, INC., a Delaware)	
corporation, BELLA VISTA)	JURY TRIAL DEMANDED
DEVELOPMENT, LLC, a Virginia)	
corporation, BELLA VISTA TOWNHOME)	
CONDOMINIUM ASSOCIATION, INC., a)	
Delaware Corporation, RE/MAX REALTY)	
GROUP, a Delaware franchise,)	
WILLIAM J. MITCHELL, individually,)	
and WAYNE MITCHELL, individually,)	
)	
Defendants.)	

**DEFENDANT BELLA VISTA DEVELOPMENT LLC'S
PRELIMINARY JURY INSTRUCTIONS**

Defendant's Objects to the following portions of plaintiff's jury instructions.

THE PARTIES AND THEIR CONTENTIONS. Contentions should be stated by the parties during closing argument and not given by the court.

EVIDENCE. Unnecessary

SUMMARY OF APPLICABLE LAW. Unnecessary

LANDOWNERS DUTY TO BUSINESS INVITEE. Defendant objects to the first sentence. It is a comment on the evidence is not unnecessary. Further, the comment is inaccurate because plaintiff was not an invitee of Wayne Mitchell.

DUTY TO INSPECT AND DISCOVER DANGEROUS CONDITIONS. This instruction should not be given because there is no evidence supporting it.

DUTY OF PROPERTY OWNER TO PROVIDE SAFE INGRESS AND EGRESS. This instruction applies to an entrance or egress off the property and not on the property and therefore is not applicable.

FORESEEABLE INJURY. This issue is not applicable to this case.

Enclosed is defendant's request for instruction and proposed jury verdict form.

CASARINO, CHRISTMAN & SHALK

/s/ Stephen P. Casarino
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Development, LLC and Wayne Mitchell

DATED: September 20, 2007

DUTY TO MAINTAIN A PROPER LOOKOUT

People have a duty to keep a proper lookout for their own safety. The duty to look implies the duty to see what is in plain view unless some reasonable expiation is offered. It is negligent not to see what is plainly visible where there is nothing to obscure one's vision, because a person is not only required to look, but also to use the sense of sight in a careful and intelligent manner to see things that a person in an ordinary exercise of care and caution would see under the circumstances. If you find that the plaintiff Sandra Fluck failed to maintain a proper lookout, you must find her negligent.

PROPOSED JURY VERDICT FORM

1. Do you find the defendant Bella Vista Development, LLC negligent in a manner proximately causing the plaintiff's injuries? Yes ____ or No ____.
2. Do you find the defendant Bella Vista Townhome Condominium Association, Inc. negligent in a manner proximately causing the plaintiff's injuries? Yes ____ or No ____.
3. Do you find the defendant Resort Realty Property Group negligent in a manner proximately causing the plaintiff's injury? Yes ____ or No ____.
4. Do you find the defendant William J. Mitchell negligent in a manner proximately causing plaintiff's injury? Yes ____ or No ____.
5. Do you find the defendant Wayne Mitchell negligent in a manner proximately causing plaintiff's injuries? Yes ____ or No ____.
6. If you have answered yes to any of the above questions answer the following question. If you have answered no to the above questions advise the bailiff of your verdict.
7. Do you find that the plaintiff was negligent in a manner proximately causing her own injuries? Yes ____ or No ____.
8. If you have answered yes to question No. 7 apportion fault between the plaintiff and any of the defendants you have found to be negligent.

Plaintiff	_____ %
Bella Vista Development, LLC	_____ %
Bella Vista Townhome Condominium Association	_____ %
Resort Realty Group	_____ %
William J. Mitchell	_____ %
Wayne Mitchell	_____ %
	_____ %
	100 %
9. If you have found that the plaintiff's negligence exceeds 50% advise the plaintiff of your verdict.
10. If you have found that the plaintiff's negligence does not exceed 50% answer the following question.
11. In what amount in damages do you award to the plaintiff \$ _____